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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/592,969

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Silvia Gerstner

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01/30/2012

BSH HOME APPLIANCES CORPORATION  
INTELLECTUAL PROPERTY DEPARTMENT  
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EXAMINER

ROHRHOFF, DANIEL J

ART UNIT

PAPER NUMBER

3637

NOTIFICATION DATE

DELIVERY MODE

01/30/2012

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NBN-IntelProp@bshg.com

## Office Action Summary

Application No.

10/592,969

Applicant(s)

GERSTNER ET AL.

Examiner

DANIEL ROHRHOFF

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2012.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 5) ☒ Claim(s) 10-26 is/are pending in the application.
- 5a) Of the above claim(s) 18, 19, 25 and 26 is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 10-17 and 20-24 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☒ The drawing(s) filed on 10 January 2012 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                          |

### **DETAILED ACTION**

1. The response received 1/10/2012 has been entered. Claims 10-26 are currently pending, claims 18-19, 23 & 26 are currently withdrawn and have been amended to include the limitations of the features of claim 10. The drawings and specification have been amended.

#### ***Drawings***

2. The drawings were received on 1/10/2012. These drawings are acceptable.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 10, 20, 21 & 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leimkuehler et al. (US patent application publication 2003/0020385) (hereinafter Leimkuehler) in view of Fisher (US patent 1,967,666).

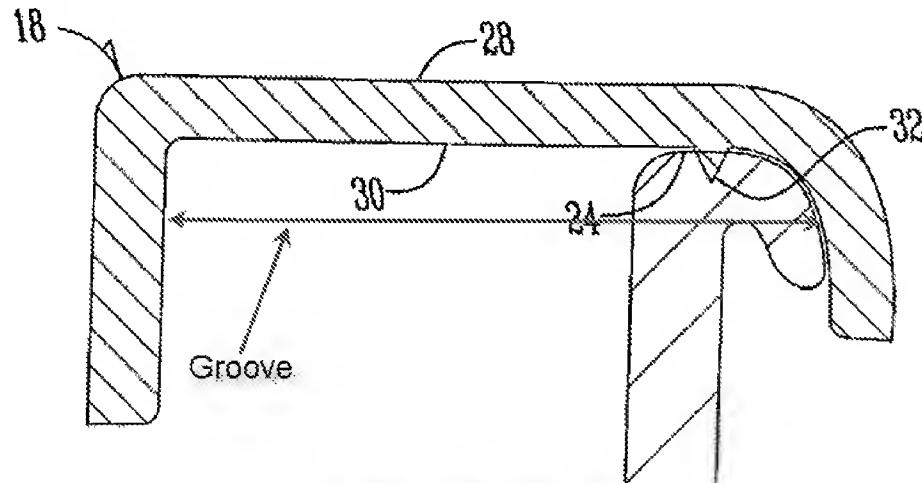
6. Regarding claim 10, Leimkuehler discloses a refrigerator comprising: an inner space (inside of 10) enclosed by a heat-insulating housing (walls of 10); at least one compartment (16) for accommodating articles to be cooled and being disposed within the inner space (Fig. 1) and having a curved edge (24); and a strip (18) disposed on a top of curved edge (Figs. 2-4) and including a plastic core (§ 21).

7. Leimkuehler does not disclose a metal jacket holding the plastic core in a curved configuration. Fisher teaches an object (1) having a curved edge (perimeter of 1) surrounded by a metal jacket (6) holding a core (5) in a curved configuration (Figs. 1-2 & Col. 1: 35-41). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the refrigerator of Leimkuehler wherein the edges of strip 18 are surrounded with a metal jacket as taught by Fisher, since it would have provided a decorative metal facing on the strip.

8. Regarding claim 20, Leimkuehler discloses a refrigerator comprising: an inner space (inside of 10) enclosed by a heat-insulating housing (walls of 10); at least one compartment (16) for accommodating articles to be cooled and being disposed within the inner space (Fig. 1) and having a curved edge (24); and a strip (18) disposed on a top of the curved edge (Figs. 2-4) and including a plastic core (§ 21) wherein the strip has a groove (see annotated Fig. 4) into which the edge of the compartment for accommodating articles to be cooled is inserted (Fig. 4).

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9. Leimkuehler does not disclose the strip to have a metal jacket holding the plastic core on the curved edge. Fisher teaches an object (1) having a curved edge (perimeter of 1) surrounded by a metal jacket (6) holding a core (5) in a curved configuration (Figs. 1-2 & Col. 1: 35-41). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the refrigerator of Leimkuehler wherein the edges of strip 18 are surrounded with a metal jacket as taught by Fisher, since it would have provided a decorative metal facing on the strip.



10. Regarding claims 21 & 24, Leimkuehler, as modified, teaches a refrigerator wherein the plastic core is held in the curved configuration by the metal jacket (Fisher: Figs. 1-2 & Col. 1: 35-41). Leimkuehler, as modified does not teach the plastic core to be an elastic material. It would have been obvious to one of ordinary skill in the art at the time of the invention to form the plastic core from an elastic material, since it has been held to be within the general skills of a worker in the art to select a known material

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on the basis of its suitability for the intended use as a matter of obvious design choice [MPEP 2144.07].

11. Claims 11-17 & 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leimkuehler in view of Fisher and Bono (US patent 3,233,644)

12. Regarding claim 11, Leimkuehler, as modified, teaches a refrigerator wherein the strip has a groove (see annotated Fig. 4) into which the edge of the compartment for accommodating articles to be cooled is inserted (Fig. 4).

13. Leimkuehler, as modified, does not teach the top of the curved edge to be a bead, the strip has a groove conforming to the bead, and the groove receives the bead. Bono teaches a compartment with a curved edge (11) where in top of the curved edge is a bead (11) with a strip (16') disposed on top of the curved edge (Fig. 1) wherein the strip has a groove (27') conforming to the bead (11), and the groove receives the bead (Fig. 3). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Leimkuehler wherein the top of the curved edge is a bead, the strip has a groove conforming to the bead, and the groove receives the bead by replacing the energy director (32) for welding with the groove which conforms to a bead on top of the curved edge as taught by Bono, since it would have allowed the strip to be removed and replaced after manufacturing.

14. Regarding claim 12, Leimkuehler, as modified, teaches a refrigerator wherein the depth direction of the groove is aligned transversely to the radius of curvature of the strip (Bono: Figs. 1-5).

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15. Regarding claim 13, Leimkuehler, as modified, teaches a refrigerator wherein the width of the groove increases, at least at certain points, from an inlet region of the groove to its bottom (Bono: Figs. 1-5).

16. Regarding claims 14-15, Leimkuehler, as modified, teaches a refrigerator wherein the jacket has a thickness (Fisher: Fig. 2). Leimkuehler, as modified, does not teach a refrigerator wherein the jacket has a material thickness of about 0.1 to 0.3 mm. It would have been an obvious matter of design choice to one of ordinary skill in the art at the time of the invention to modify the jacket such that its material thickness was about 0.2 mm.

17. Regarding claim 16, Leimkuehler, as modified, teaches a refrigerator with a plastic core (18) and a metal jacket (Fisher: 6). Leimkuehler, as modified, does not teach a refrigerator wherein the plastic core and the metal jacket are co-extruded. This claim is a product by process claim and the plastic core and metal jacket do not depend on the process of making it. The product-by-process limitation "co-extruded" would not be expected to impart distinctive structural characteristics to the plastic core and metal jacket. Therefore the claimed co-extruded metal jacket and plastic core is not different and unobvious from the plastic core and metal jacket of Leimkuehler, as modified.

18. Regarding claim 17, Leimkuehler, as modified, teaches a refrigerator wherein the compartment for accommodating articles to be cooled includes a door compartment (Fig. 1).

19. Regarding claims 22, Leimkuehler, as modified, teaches a refrigerator wherein the plastic core is held in the curved configuration by the metal jacket (Fisher: Figs. 1-2

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& Col. 1: 35-41). Leimkuehler, as modified does not teach the plastic core to be an elastic material. It would have been obvious to one of ordinary skill in the art at the time of the invention to form the plastic core from an elastic material, since it has been held to be within the general skills of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice [MPEP 2144.07].

20. Regarding claims 23, Leimkuehler, as modified, teaches a refrigerator wherein the plastic core is held on the bead by the metal jacket (Fisher: Figs. 1-2 & Col. 35-41).

### ***Response to Arguments***

21. Applicant's arguments filed 1/10/2012 have been fully considered but they are not persuasive.

22. In response to applicant's argument that Fisher is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention.

See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Fisher is reasonably pertinent to the particular problem with which applicant was concerned. Fisher is concerned with providing a decorative edge for an object (Col. 1: 10-17) and applicant is also concerned with providing a decorative edge for an object (abstract).

23. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that



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any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

24. In response that Fisher was not located during a search for relevant art within the field of applicants' endeavor or reasonably related to the particular problem with which the applicants were concerned, the examiner disagrees. The field of applicants' endeavor is a refrigerator with a compartment that has a strip on the compartment. Thus anything with a decorative strip would fall within applicants' field of endeavor. One of ordinary skill in the art would not limit themselves to decorative strips only on compartments within a refrigerator when looking for improvements.

25. In response to applicant's arguments against the references individually, (Leimkuehler discloses no recognition of any benefit to providing an outer metal strip over an inner member and Fisher does not mention refrigerator buckets and only provides a solution for protecting the edge of a glass table top) one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

26. In response to applicant's argument that the metal jacket (6) of Fisher does not hold the core (2-5) in any configuration, much less a curved configuration, the examiner

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disagrees. In Col. 1: 35-40 Fisher teaches “The panel [1] is surrounded by a border frame [2-9] of novel construction. The border frame is composed of a body member [2-5] of steel or the like and a facing or sheathing [6] of decorative or ornament metal which also serves to secure the frame structure to the panel” (emphasis added). Since the metal jacket is securing the core to the object, the metal jacket is holding the core in a curved configuration as recited in the claims.

27. In response to applicant's argument that it is not clear how the configuration of Fisher could hold trim piece 18 to container 20 of Leimkuehler because the configuration of Fisher is nothing like the configuration of Leimkuehler. Fisher teaches the metal jacket to bend around the panel to interlock the metal jacket with the panel (Col. 2: 89-98).

### ***Conclusion***

28. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL ROHRHOFF whose telephone number is (571)270-7624. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Darnell Jayne can be reached on 571-272-7723. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. R./  
Examiner, Art Unit 3637  
1/23/2012

/Darnell M Jayne/  
Supervisory Patent Examiner, Art Unit 3637